

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VHT, INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW GROUP, INC., a Washington
corporation; and ZILLOW, INC., a Washington
corporation,

Defendants.

No. 2:15-cv-1096

JOINT STATUS REPORT

Pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Order dated July 22, 2015 (ECF No. 14), plaintiff VHT, Inc. ("Plaintiff") and defendants Zillow Group, Inc. and Zillow, Inc. ("Defendants") held a FRCP 26(f) conference on September 8, 2015, and hereby submit the following Joint Status Report:

1. A statement of the nature and complexity of the case.

Statement of Plaintiff VHT:

Plaintiff VHT is the leading full-service provider of professional photographs for the real estate industry. VHT serves over 75,000 real estate professionals nationwide by commissioning high quality photographs of properties that listing agents and brokers have listed for sale, and then licensing them the right to use those photographs to market the properties. VHT owns the copyright in its photographs, and grants its clients – listing agents and brokers – a non-exclusive license specifically tailored to permit use of those photographs

1 only for the marketing of the subject properties for sale. The listing agents and brokers
2 incorporate VHT's photographs into their listings and in many cases, send those listings to
3 Multiple Listing Services, many of which bundle listings together and provide them to
4 consumer-facing websites, including Defendants Zillow Group, Inc. and Zillow, Inc.'s
5 (collectively, "Zillow") central listing website of properties for sale or rental (the "Listing
6 Site"), which is said to be the world's largest online marketplace for real estate property
7 listings.

8 VHT's Complaint primarily focuses not on the Listing Site, but on Zillow Digs – an
9 independent section of Zillow's website (the "Digs Desktop") and a stand-alone mobile app
10 (the "Digs App" and together with the Digs Desktop, the "Digs Site") – which showcases
11 groups of photographs of particular elements of home design, such as kitchen countertops,
12 plumbing fixtures, or art deco sofas, and pairs them with what appear to be advertisements
13 from vendors who sell the goods depicted in the photographs or offer related services. Zillow
14 launched the Digs Site using a large number of images it had copied from the Listing Site, has
15 created tools on the Listing Site that allow users to copy images to the Digs Site, has employees
16 review the images users transfer to the Digs Site to determine whether those images should
17 appear on the main public portions of the Digs Site, tag them with category labels (*e.g.*, "living
18 room," "lamps," "art deco") that make them more easily searchable for users, and insert
19 promotional bubbles with links that allow users to purchase products (which it calls "product
20 tags") directly onto the copyright-protected photographs.

21 Prior to filing this lawsuit, VHT identified 316 of its registered copyright-protected
22 images that have appeared on the Digs Site without authorization, which are the subject of its
23 Complaint. The use of these images on the Digs Site, a home design website, does not serve to
24 market the subject properties; that use is therefore clearly beyond the scope of the limited
25 license VHT granted to its agent and broker clients. In addition, many of the VHT photographs
26 which appear on the Digs Site are pictures of properties that have already been sold, which by
27

1 definition fall outside the scope of that limited license. Thus, Zillow itself is actively infringing
2 VHT's copyrights as well as contributing to infringement by its users.

3 At this time, VHT does not know the full scope of Zillow's infringement of its
4 copyrights. VHT believes that discovery will reveal a significant number of its registered
5 images on the Digs Site, beyond those already identified. Only through discovery from Zillow
6 will VHT be able to determine the precise number of separate infringements that Zillow has
7 committed. VHT will then seek leave to amend to add the additional infringements.

8 Zillow answered the complaint asserting various affirmative defenses. Zillow's
9 principal argument appears to be that its use of the photos on Digs is within the scope of the
10 VHT license to brokers and listing agents because "offers to purchase properties are often even
11 made when owners have not listed the properties for sale, and even a recent purchaser of a
12 property is often willing to resell." (Answer, ¶ 53). That argument is wholly without merit.
13 VHT only licenses its photographs for these purposes to particular brokers or agents who have
14 been retained to sell a specific property for a specific homeowner, and only during the time that
15 property is actively listed for sale.

16 Zillow's use on the Digs Site of a number of VHT photographs of properties that have
17 been sold also raises questions about its continued display of such photographs on the Listing
18 Site. Although the license that VHT grants to listing agents and brokers allows use of the
19 photos only to market the subject properties that are actively for sale (and the brokers who are
20 representing that property), it appears that Zillow continues to display those images on its
21 Listing Site long after the properties are sold (and after Zillow labels those properties as
22 "SOLD"). A year ago, VHT raised this issue with Zillow in connection with the Listing Site.
23 There appears to be an issue as to whether Zillow is entitled to the safe harbor provided by
24 Section 512 of the Digital Millennium Copyright Act. Through discovery, VHT will explore
25 the availability of this potential safe harbor defense with respect to the Listing Site and may
26 seek leave to amend its complaint appropriately, depending on the full facts that emerge.
27

1 Because of Zillow's apparent widespread use of VHT's images on the Digs Site, and
2 the possibility that Zillow will assert a safe harbor defense with respect to the Listing Site,
3 VHT will seek leave to amend its complaint (possibly more than once) to add additional acts of
4 infringement, depending on the facts that emerge in discovery.

5 VHT seeks to recover maximum statutory damages for willful copyright infringement
6 for each act of infringement for each VHT image that has appeared on the Digs Site (and
7 alternatively for actual damages plus defendants' profits attributable to the infringement). VHT
8 is entitled to a separate award of damages for each VHT image Defendants have infringed,
9 since each of those images has independent economic value, including but not limited to
10 licensing for use in home design; television and film; on news, entertainment and social media
11 websites; and on mobile apps. In addition to expert testimony, VHT anticipates it will
12 demonstrate its photos' independent economic value through evidence of Zillow's use of
13 individual VHT images on the Digs Site, the payment by brokers and real estate agents for
14 limited licenses to use VHT photographs, licenses VHT has granted for use of individual VHT
15 images, evidence of approaches by other parties seeking to license individual VHT images, and
16 evidence of Zillow's own approach to VHT to license VHT images for use on the Digs Site. In
17 addition, in discovery, VHT will be seeking documents from Zillow regarding its licensing or
18 potential licensing of images for use in Digs, including documents concerning its discussions
19 with VHT on that topic.

20
21 Statement of Defendants Zillow and Zillow Group:

22 Defendants own and operate www.zillow.com, an online real property listing service
23 (www.zillow.com) for the marketing and sale of properties that are being offered for sale, and
24 properties whose owners may be willing to sell upon presentation of an attractive purchase
25 offer (the "Listing Site"). The Listing Site also provides a means for brokers and agents for
26 properties to market their services to potential buyers and sellers of properties.
27

1 Photographs of properties (exterior and interior) are an essential aspect of marketing
2 and selling properties and marketing the services of brokers and agents. Zillow obtains
3 photographs of properties through contracts with brokers, agents, and Multiple Listing Services
4 (“MLSs”), and contractually requires these suppliers to provide Zillow with the rights for
5 Zillow to use such photographs.

6 Since 2013, www.zillow.com has featured a separate section, called Zillow “Digs”
7 (“Digs Site”), appearing at www.zillow.com/digs/. The Digs Site can be accessed from the
8 www.zillow.com home page. The Digs Site is directed at consumers who are interested in
9 home design and renovation, and who want to see photographs of existing design and
10 renovation projects to gain ideas, to learn about the estimated costs of such projects, and to find
11 out where materials and services similar to those shown in the photographs can be purchased.
12 The information on the Digs Site is useful to users who are planning or thinking about home
13 improvement projects as well as for potential buyers searching for a home. The information
14 available on the Digs Site can also be accessed by mobile device users who download a
15 separate “app” (the “Digs App”; all references herein to “Digs” refer to both the Digs Site and
16 the Digs App unless expressly stated otherwise).

17 The home page of Digs is a public board that can be viewed by all users. The board
18 contains photographs of various house interiors and exteriors. Zillow has made the
19 photographs on the public board searchable by categories such as type of room, cost, color, and
20 styles. In addition, Zillow has added “bubbles” to features, such as tiles, light fixtures, paint
21 and furniture shown within certain searchable photographs. Clicking on the photograph brings
22 up information about a merchant that sells the same or a similar item, a price, and a link to the
23 merchant’s website. The same information appears to the right of the photograph, under the
24 heading “Recreate this look with similar products.” The information provided to users is not
25 advertising: Zillow has not been solicited by the merchants to include this information, and
26 does not receive any payment from a merchant if a Digs user clicks on a weblink to the
27

1 merchant's site. Rather, the information is provided to be useful to users who are planning or
2 thinking about home improvement projects.

3 In addition to the public board, Zillow users may set up personal boards through a "My
4 Digs" option. This allows users to save photographs from other sources (including sources
5 other than the Listing Site) to their personal boards. The photographs on a personal board are
6 not searchable, but can be viewed by third parties that know the name of the user, unless the
7 user or Zillow designates them as "private." In the case of a "private" board, the photographs
8 can only be seen by the user herself or himself.

9 Some of the photographs on the public board of Digs were saved from property
10 photographs on the Zillow Listing Site. In such a case, the photograph is labeled "Home from
11 Zillow" on the public board page. Clicking on a "Home from Zillow" photograph brings up, in
12 addition to a larger version of the photograph that is searchable and, in certain cases,
13 "bubbled," several other thumbnail-sized photographs under the "More from this home"
14 heading. These photographs are in fact visual links back to the property on the Zillow Listing
15 Site from which the photograph was saved; these photographs do not "reside" on Digs.
16 Clicking on any of the thumbnails on "More from this home" automatically takes the user back
17 to the page for the property on the Listing Site, from which the viewer can see details about the
18 property, other photographs of the property in large format, past and current sales information,
19 Zillow's proprietary price estimate for the property (called a Zestimate®) and information
20 about the agents or brokers selling the property or which have sold the property.

21 Many agents and brokers maintain personal profile pages on Zillow to market their
22 services. Clicking on the name of such a person on a specific property page on the Listing Site
23 will take the user to the agent or broker profile page, where the user can learn information
24 about the broker (name of agency, location of office, website link, licenses held, and language
25 spoken), and properties the broker or agent is selling or has sold. Persons who have used the
26 service of the agent or broker can create a review that later users can see. This profile, which
27

1 can be accessed from Digs as noted above, is an important means for agents and brokers to
2 market their services to potential sellers and purchasers.

3 Only Zillow can save photographs from the Zillow Listing Site to the Digs public
4 board. Some photographs have been saved at Zillow's own initiative. Other photographs were
5 first saved by Digs users to their personal boards. Zillow moderators will review certain
6 photographs saved by Digs users to their personal boards and, if the photographs meets
7 Zillow's standards, may post the photograph to the public Digs board.

8 According to allegations in its complaint, Plaintiff VHT is a photography company that
9 contracts with MLSs, brokers, and agents, to take photographs of properties. VHT claims that
10 it then hires independent contractor photographers to take the photographs, and that these
11 photographers assign their copyrights in the photographs to VHT. Zillow intends to test this
12 assertion that VHT owns the copyright in all photographs in issue through discovery.

13 According to the exhibits to its complaint, VHT has not registered copyright in the photographs
14 individually. Rather, VHT originally filed registration for a database of photographs, and has
15 periodically filed new registrations as updates to what it calls the "VHT Database."

16 According to the complaint, VHT's standard contract with MLS's, agents and brokers
17 permits the photographs to be used for "the sales and marketing of the subject property/or the
18 company/agent representing the property." The complaint further alleges that these licensees
19 have supplied Zillow with the photographs that have been saved to Digs. It is Zillow's
20 position that to the extent Zillow or users of Digs have used VHT photographs on Digs, as
21 alleged in the complaint, these uses are authorized under Zillow's own license, of which Zillow
22 is unquestionably a third-party beneficiary, and are therefore not infringing.

23 Property photographs, as displayed on both the Listing Site and on Digs, assist in selling
24 or marketing of the property depicted and the marketing of the services of companies and
25 agents that represent the property. First, properties remain marketed through Zillow and Digs
26 even when the property has been sold, because it is well known in residential real estate that
27 even recent purchasers of a property will be willing to resell when presented with an attractive

1 offer to buy, and Zillow and Digs are means by which potential buyers locate properties on
2 which they would be willing to make offers. Second, these photographs on Zillow and Digs
3 continue to market the services of brokers and agents even after a property is sold because users
4 want to know which broker or agency represented the property in its last sale. Users can locate
5 that information by clicking through “Home from Zillow” photographs on the public or
6 personal Digs boards, then clicking on the “View home” link or any of the “More from this
7 home” links, or alternatively by clicking on the broker or agent’s profile on the property page.
8 Thus, all uses alleged in the complaint fall within the scope of VHT’s license. Furthermore,
9 displaying images for a particular home on Zillow and Digs increases the search engine
10 optimization value for that home, which leads to an increase in its display in web search results.

11 In addition to the defense of license and a potential defense based on lack of standing,
12 Defendants contend that the use of VHT photographs on Zillow and Digs, because they permit
13 users to locate properties and otherwise, are fair uses under 17 U.S.C. § 107 and therefore are
14 not infringing. Defendants further contend that Plaintiff’s claims are barred in whole or in part
15 by the statute of limitations set forth in 17 U.S.C. § 507(b). Defendants also contend that even
16 were Plaintiff to establish liability for infringement, because the registered works in this case
17 are databases, Plaintiff could not recover more than one award of statutory damages for each
18 database so infringed, regardless of the number of photographs that may be involved in the
19 database. Lastly, discovery may show that Plaintiff failed to register one or more of the
20 databases alleged in the complaint for copyright within three months from first publication of
21 any part of that database. In such case, Plaintiff would be barred from recovering statutory
22 damages or attorney’s fees for any alleged infringement of those databases.

23 VHT’s statement of its claim concedes that VHT’s current complaint does not currently
24 claim that use of any VHT photographs on the Zillow Listing Site is infringing. However, it
25 states that VHT intends to amend its complaint (perhaps more than once) to assert claims of
26 infringement addressed to the Listing Site. Zillow objects to such amendment. If the court
27 grants leave to VHT to amend its complaint, Zillow will assert, among other defenses, that the

1 use of VHT photographs on the Listing Site (a) is permitted under VHT's licenses to the
 2 brokers, agents, and MLSs that have supplied the Listing Site photographs to Zillow, (b) is
 3 subject to the safe harbor defense of 17 U.S.C. § 512, (c) is a fair use under 17 U.S.C. § 107,
 4 (d) is barred, in whole or in part, by the statute of limitations set forth in 17 U.S.C. § 507.
 5 Zillow reserves the right to assert other defenses if an amended complaint is served.

6 **2. A proposed deadline for joining additional parties.**

7 The parties propose a deadline of **November 2, 2015** to join additional parties.

8 **3. Whether the parties consent to assignment of this case to a U.S. Magistrate Judge.**

9 No.

10 **4. Proposed Discovery Plan**

11 **A. FRCP 26(a)(1) initial disclosures.**

12 The parties intend to exchange initial disclosures on September 21, 2015, pursuant to
 13 the Court's Order dated July 22, 2015. The parties do not request any changes to the timing,
 14 form, or requirement for disclosures under Federal Rule of Civil Procedure 26(a).

15 **B. The subjects on which discovery may be needed, timing, and whether**
 16 **discovery should be conducted in phases.**

17 Statement of Plaintiff VHT, Inc. ("VHT")

18 Given Zillow's apparent extensive use of VHT's images, the limitations of the search
 19 function on the Digs Site, and the significant number of affirmative defenses Zillow raised in
 20 its Answer, VHT anticipates it will need significant and broad-ranging discovery from Zillow.
 21 Specific topics on which VHT anticipates seeking discovery include, but are not limited to:

22 (i) Zillow's use of VHT's images on the Digs Site, including forensic analysis of
 23 Zillow's databases and back-end systems that sit behind the Listing Site and the Digs Site,
 24 which will include but not be limited to: (a) analysis of how many infringing images were
 25 posted to the Digs Site and by whom, when and, if applicable, when each image was taken
 26 down, (b) the number of "product tags" promoting vendors and how they were posted and by
 27

1 whom, and (c) the origin and functionality of the “More From This Home,” “Save to Digs,”
2 “Like”, “Dig It”, and “Enlarge This Image” features;

3 (ii) the means by which VHT’s images are uploaded to the Digs Site, including the
4 transfer of images from the Zillow Listing Site to the Digs Site and Zillow’s internal
5 procedures for reviewing images selected by users and determining which images to add to the
6 publicly-viewable section of the Digs Site;

7 (iii) the review process used by Zillow and its agents, representatives and employees
8 for determining which photos will appear on the public Digs board;

9 (iv) the process by which photos are tagged on the Digs Site, including any
10 agreements with third-parties into which Zillow has entered relating to the tagging of photos on
11 the Digs Site;

12 (v) Zillow’s actual and prospective efforts to generate revenue from the Digs Site,
13 including related efforts to generate revenue thorough the Listing Site;

14 (vi) Zillow’s efforts to attract users to the Digs Site and the Listing Site and the
15 amount of traffic actually attracted to each;

16 (vii) the volume of user traffic on Zillow’s sites and the number of “eyeballs” or
17 “hits” for each VHT-owned image;

18 (viii) Zillow’s knowledge of infringing activity and other information relevant to
19 whether the infringement was willful;

20 (ix) Zillow’s efforts, if any, to police copyright infringement on the Digs Site;

21 (x) any other lawsuits, demand letters and formal or informal complaints against
22 Zillow for violation or infringement of intellectual property rights.

23 (xi) Zillow’s negotiations for and internal communications about a possible license
24 for use of VHT’s image database or individual images;

25 (xii) the economic value of VHT’s images, both as an individual photos and as a
26 database;

1 (xiii) Zillow's strategic plans relating to the Digs Site and/or any other uses of images
2 from the Listing Site for any other purpose or use;

3 (xiv) Zillow's communications with other parties, including other photo studios,
4 relating to the potential or actual licensing or supply of images for the Digs Site or the Listing
5 Site;

6 (xv) Zillow's sourcing of images, including its agreements with agents, brokers and
7 multiple listing services in the real estate industry;

8 (xvi) Zillow's prior agreement with List Hub;

9 (xvii) the facts underlying Zillow's claimed safe harbor defense with respect to the
10 Listing Site; and

11 (xviii) Zillow's treatment of properties marked "SOLD" on both the Digs Site and the
12 Listing Site.

13
14 Statement of Defendants Zillow:

15
16 Specific topics on which Zillow intends to seek discovery include, but are not limited
17 to:

18 (i) All income and/or royalties received by Plaintiff for use of its photographs.

19 (ii) All documents and communications relating to the licensing of Plaintiff's
20 photographs.

21 (iii) All documents and information allegedly establishing copyright ownership by
22 Plaintiff of the photographs allegedly infringed by Defendants, including documents and
23 communications relating to agreements between Plaintiff and photographers.

24 (iv) All actual and potential licensing agreements between Plaintiff and third parties,
25 including its broker and agent customers, relating to the commercial licensing of Plaintiff's
26 photographs, and communications concerning such agreements.

27 (v) Dates of first publication of the photographs at issue in this action and dates

1 when such photographs (or databases containing the photographs) were registered for
2 copyright.

3 (vi) Plaintiff's knowledge and awareness of the use by Defendants of Plaintiff's
4 photographs.

5 (vii) All past communications between Plaintiff and Defendants concerning claims of
6 infringement or licensing of Plaintiff's photographs.

7 (viii) The course of conduct and dealings among and between Plaintiff and
8 Defendants relating to the marketing and licensing of Plaintiff's photos.

9 (ix) All other lawsuits, demand letters and formal or informal complaints asserted by
10 Plaintiff against third parties claiming violation or infringement of Plaintiff's intellectual
11 property rights in its photographs or demanding takedown of online material.

12 (x) All documents and communications concerning Plaintiff's alleged registration of
13 copyright in the photographs at issue in this action.

14 (xi) All documents and communications relating to any investigation by Plaintiff
15 into alleged unauthorized uses of its photographs or infringement of copyrights in its
16 photographs.

17 (xii) All lawsuits, demand letters, and formal or informal complaints asserted against
18 or received by Plaintiff alleging that Plaintiff has violated or infringed third-party intellectual
19 property rights.

20 (xiii) Documents and information concerning the corporate ownership and affiliations
21 of Plaintiff.

22 (xiv) All documents and communications concerning other parties that may have an
23 interest in any recovery that Plaintiff seeks in this action.

24 (xv) All documents and information concerning alleged damages suffered by
25 Plaintiff as a result of Defendants' alleged copyright infringement, including lost licensing
26 revenue.
27

(xvi) All documents and information concerning the alleged independent economic value of the photographs at issue in this action.

Defendants reserve the right to seek discovery on additional subjects to the extent information produced in response to a first wave of discovery so warrants. Defendants further reserve the right to seek discovery on additional subjects if Plaintiff is permitted to amend its complaint

Discovery deadlines and timing

The parties propose that **April 15, 2016** be the deadline to complete fact discovery. The parties also anticipate that expert discovery will be needed. The parties, pursuant to Fed. R. Civ. P. 26(a)(2), propose the following deadlines for expert discovery:

- **May 15, 2016:** deadline to submit expert reports by the party who bears the burden of proof on the particular issue that is the subject of the report.
- **June 10, 2016:** deadline to complete depositions of opening report experts.
- **June 30, 2016:** deadline for submission of any rebuttal expert reports.
- **July 18, 2016:** deadline to complete depositions of rebuttal experts.

One or both parties may move the Court to extend the discovery deadlines in the event Plaintiff seeks and is granted to leave to amend its complaint to add claims relating to the Zillow Listing Site.

The parties do not request any formal phasing of discovery.

C. Electronically stored information.

Discovery and production of electronically stored information will likely present significant issues in this case. See Section 5(I)-(J) below.

D. Privilege Issues.

The parties do not expect any significant or unusual privilege issues to arise in this matter. The parties agree to work cooperatively to address these issues as they come up and will endeavor to resolve any disputes by stipulation or agreement. The parties intend to submit to the Court a proposed stipulated order pursuant to Federal Rule of Evidence 502(d) regarding

1 the inadvertent production of material protected by the attorney-client privilege and work
2 product doctrine.

3 **E. Proposed limitations on discovery.**

4 None.

5 **F. The need for any discovery related orders.**

6 The parties intend to submit to the Court a proposed Stipulated Protective Order based
7 on the Court's model form with a redline indicating the changes made to the model.

8 **5. Views, proposals, and agreements for items set forth in Local Civil Rule 26(f)(1).**

9 **A. Prompt case resolution.**

10 The parties have discussed the possibilities for prompt case resolution and are exploring
11 the possibilities of early resolution.

12 **B. Alternative dispute resolution.**

13 The parties are amenable to private mediation. They propose that the Court set a
14 deadline of **September 2, 2016** to engage in mediation. One or both parties may move the
15 Court to extend the deadline for mediation in the event Plaintiff seeks and is granted to leave to
16 amend its complaint to add claims relating to the Zillow Listing Site.

17 **C. Related cases.**

18 None.

19 **D. Discovery Management.**

20 The parties agree to work cooperatively to address discovery issues as they come up.
21 The parties will endeavor to resolve any disputes by stipulation or agreement. The parties do
22 not believe that the discovery limits set forth in the Federal Rules of Civil Procedure and Local
23 Civil Rules should be modified at this time. The parties intend to share discovery received
24 from third parties. The parties do not currently request a discovery or case management
25 conference, and will endeavor to resolve any discovery disputes without the need for Court
26 intervention to the maximum extent possible. The parties do not request the assistance of a
27

1 magistrate judge for settlement conferences and do not request the use of an abbreviated
2 pretrial order.

3 **E. Anticipated discovery sought.**

4 See response to Section 4.B, above.

5 **F. Phasing motions.**

6 Given the unusual posture of the case – specifically, the requirement that VHT amend
7 its Complaint to specifically allege each of what will likely be a large number of additional
8 infringements uncovered during discovery on the Digs Site (and potentially the Listing Site), as
9 well as the varying defenses that Zillow may assert – VHT anticipates it may need to file more
10 than one summary judgment motion. Specifically, VHT anticipates making an early motion for
11 summary judgment on the issue of liability with respect to all or part of the case. Depending on
12 what it learns during discovery, VHT subsequently may need to seek additional rulings from
13 the Court on other aspects of the case.

14 The parties propose a deadline for filing dispositive motions of **August 7, 2016**.

15 One or both parties may move the Court to extend the deadline for filing dispositive
16 motions in the event Plaintiff seeks and is granted to leave to amend its complaint to add claims
17 relating to the Zillow Listing Site.

18
19 **G. Preservation of discoverable information.**

20 The parties agree to preserve all discoverable information and have instituted litigation
21 holds to ensure all relevant and material information has been preserved.

22 **H. Privilege issues.**

23 See response to Section 4(D), above.

24 **I. Model Protocol for Discovery of ESI.**

25 The parties do not agree to use the Court's Model Protocol for Discovery of
26 Electronically Stored Information in Civil Litigation in an attempt to facilitate the cost-effective
27 and efficient discovery and production of that information.

J. Alternatives to the Model ESI Agreement

Rather than using the WDWA's Model ESI Order, which sets limits on custodians, data and searches that are inconsistent with the broad scope of discovery both parties contemplate taking in this case, *see* Section 2, above, the parties agree to work cooperatively to set up an efficient approach to discovery, including (i) targeted collections from individuals and non-custodial sources, following a preliminary exchange of information about document custodians and non-custodial searches; (ii) searches of ESI using search terms the parties have exchanged and attempted to agree on; and (iii) discovery of each party's image databases, either through an agreed protocol, or if the parties are unable to reach agreement, through inspections by outside forensic consultants.

6. Date by which discovery can be completed

The parties propose to complete fact discovery by **April 15, 2016** and expert discovery by **July 18, 2016**.

One or both parties may move the Court to extend the discovery deadlines in the event Plaintiff seeks and is granted to leave to amend its complaint to add claims relating to the Zillow Listing Site.

7. Whether the case should be bifurcated.

The parties do not believe that this case should be bifurcated.

8. Whether the pretrial statements and pretrial order called for by Local Rule CR 16 and CR 16.1 should be dispensed with.

The parties do not believe that the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with.

9. Whether the parties intend to utilize the Individualized Trial Program set forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil Rule 39.1.

The parties do not intend to utilize the Individualized Trial Program set forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil Rule 39.1.

10. Any other suggestions for shortening or simplifying the case.

None.

11. The date the case will be ready for trial.

The parties agree that this matter will be ready for trial by **December 5, 2016**. One or both parties may move the Court to extend the trial date in the event Plaintiff seeks and is granted to leave to amend its complaint to add claims relating to the Zillow Listing Site.

12. Whether the trial will be a jury or non-jury.

Jury trial.

13. Total number of trial days required.

The parties believe that ten (10) days will be necessary. One or both parties may move the Court to extend the number of trial days allocated for this case in the event Plaintiff seeks and is granted to leave to amend its complaint to add claims relating to the Zillow Listing Site.

14. Names, addresses, and telephone numbers of all trial counsel.

DAVIS WRIGHT TREMAINE LLP

Jonathan M. Lloyd, WSBA No. 37413
Max B. Hensley, WSBA No. 47030
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Tel: 206.622.3150

Marcia B. Paul
admitted pro hac vice
Yonatan Berkovits
admitted pro hac vice

DAVIS WRIGHT TREMAINE LLP
1633 Broadway, Suite 2700
New York, New York 10019
Tel: 212.489.8230

Attorneys for Plaintiff

DLA PIPER LLP (US)

Stellman Keehnel, WSBA No. 9309
Andrew R. Escobar, WSBA No. 42793
701 Fifth Avenue, Suite 7000
Seattle, Washington 98104-7044
Tel: 206.839.4800

Andrew L. Deutsch
admitted pro hac vice
Melissa A. Reinckens
admitted pro hac vice

DLA PIPER LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
Tel: 212.335.4500

Attorneys for Defendants

15. Dates on which trial counsel may have complications to be considered in setting a trial date.

No complications are presented by the proposed trial date.

16. Whether all defendants/respondents have been served, and if not, a proposed schedule for the same.

All Defendants have been served.

17. Whether any party wishes a scheduling conference with the Court before the Court enters a scheduling order in the case.

No.

18. Dates on which every non-governmental corporate party filed its initial disclosure statement pursuant to FRCP 7.1.

Plaintiff filed its initial disclosure statement on July 8, 2015. Defendants filed their initial disclosure statement on July 23, 2015.

19. Whether the parties consent to having hearing in this matter video recorded as part of the Judiciary's Pilot Project on Cameras in the Courtroom.

The parties do not consent to having hearings in this matter video recorded as part of the Judiciary's Pilot Project on Cameras in the Courtroom.

DATED this 21st day of September, 2015.

DAVIS WRIGHT TREMAINE, LLP

By: /s/ Jonathan M. Lloyd
Marcia Paul (*Admitted pro hac vice*)
Jonathan M. Lloyd WSBA #37413
Yonatan Berkovits (*Admitted pro hac vice*)
Max Hensley, WSBA #47030
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Telephone: 206-622-3150
Facsimile: 206-757-7700
Email: marciapaul@dwt.com
jonathanlloyd@dwt.com
yonatanberkovits@dwt.com
maxhensley@dwt.com

Attorneys for Plaintiff

DLA PIPER LLP

By: /s/ Andrew L. Deutsch
Andrew L. Deutsch (*Admitted pro hac vice*)
Stellman Keehnel, WSBA # 9309
Andrew R. Escobar, WSBA # 42793
Melissa A. Reinckens (*Admitted pro hac vice*)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044
Telephone: 206-839-4800
Facsimile: 206-839-4801
Email: andrew.deutsch@dlapiper.com
stellman.keehnel@dlapiper.com
andrew.escobar@dlapiper.com
melissa.reinckens@dlapiper.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2015, I had the foregoing electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 21st day of September, 2015.

Davis Wright Tremaine LLP
Attorneys for Plaintiff

By /s/ Jonathan M. Lloyd
Jonathan M. Lloyd, WSBA #37413
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: jonathanlloyd@dwt.com